**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 13608 of 2004**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**SURESHBHAI PUNAMBHAI PATEL - Petitioner(s)**
**Versus**
**NAAR DUDH UTPADAK SAHAKARI MANDALI LTD. & 1 - Respondent(s)**

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**Appearance :**

MR PRAKASH K JANI for Petitioner(s) : 1,
MR RAVINDRA SHAH for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 19/06/2006**

**ORAL JUDGMENT**

1. I have learned advocate Shri P.K. Jani for the petitioner and learned advocate Shri Ravindra

Shah for respondent-society. The respondent no.2 had filed Lavad Suit No.161/1996 against the petitioner seeking to recover an amount for 1,26,000/- The suit came to be decreed by an order dated 14-2-2001. This was in absence of learned advocate for the petitioner. He therefore, filed an application for restoration/setting aside of ex-parte decree. This was rejected by the Board of Nominees on 19-12-2001. On 1-5-2002, the respondent-society filed Caveat application before Gujarat State Cooperative Tribunal. The petitioner filed appeal against the decree dated 14-2-2001. The appeal was filed on 06-08-2002. The Tribunal however, was pleased to reject the appeal on the ground of delay by impugned order dated 24-06-2004.

2. Primarily, the Tribunal considered that the petitioner did not disclose about filing of Caveat and also did not disclose the fact that he had earlier moved an application for restoration before the Board of Nominees which

was rejected. Learned advocate Shri P.K.Jani for the petitioner submitted that petitioner should be given an opportunity to defend himself and for the lapse on part of his learned advocate before the Board of Nominees, the petitioner should not be made to face an ex-parte decree.

3. On the other hand, learned advocate Shri Ravindra Shah for the respondent-society strongly opposed the petition. He submitted that the petitioner has made many misstatements in the appeal and in application for condonation of delay. He submitted that the petitioner himself had filed restoration application but never disclosed such filing or rejection of such an application by the Board of Nominees. He therefore, supported the order passed by the Tribunal. In the alternative, he suggested that even if the order of the Tribunal is to be set aside, entire proceedings should be remanded to the Board of Nominees for consideration on merits. He submitted that this would save one stage in the proceedings since the society is

seeking to recover money from petitioner since long. He however, submitted that petitioner should be put to strict terms for remanding the proceedings.

4. Having heard learned advocates appearing for the parties, I find that though the Tribunal is justified in observing that the petitioner had not made certain disclosures in his appeal and the application for condonation of delay, in facts of the present case, same should not have resulted into leaving the petitioner to face an ex-parte decree without full adjudication. Primarily, I find that petitioner did not gain any advantage by not disclosing the fact of his having filed restoration application and same having been ultimately rejected by the Board of Nominees. This if at all would have helped the petitioner to explain delay in filing the appeal. At the best it may be an error on part of the Counsel of the petitioner. It is therefore, difficult to penalise the petitioner by upholding the rejection of his appeal on the

ground of delay. Nevertheless the fact remains that petitioner is facing a decree. Earlier decree was passed since advocate for the petitioner was not present. The petitioner also consumed substantial time in filing the appeal. Lavad Suit was filed way back in the year 1996. Considering all these aspects of the matter, I find it necessary that even while accepting the request of the petitioner and reopening the entire Lavad Suit, the petitioner should be put to certain terms.

5. In the result, the order passed by the Cooperative Tribunal dated 24-6-2004 as well as order passed by the Board of Nominees dated 14-2-2001 are quashed and set aside. The proceedings are remanded to Board of Nominees for consideration on merits after hearing both the sides. This is conditional upon petitioner depositing with the respondent 25% of the principal sum demanded within a period of 8 weeks from the date of receipt of a copy of this order. The respondents shall hold the said sum

in trust to be adjusted subject to outcome of the Lavad Suit. The petitioner should also pay an amount of cost already deposited by the petitioner pursuant to order dated 25-10-2004 which shall be paid to the respondent by the Registry. R & P be remanded back to the Board of Nominees. Considering the long pendency of the proceedings, Board of Nominees shall endeavour to dispose of the same within six months from the date of receipt of a copy of this order. The petition is disposed of accordingly. Rule made absolute to the above limited extent with no order as to costs.

**(Akil Kureshi,J.)**

(raghu)